



Date: June 16, 1998
Case No.: 97-INA-397

In the Matter of:

Maqsons
Employer,

On Behalf of:

Saeed Anwer
Alien.

APPEARANCES: Michael E. K. Mpras, Esq.
Annandale, Virginia
for Employer and Alien

BEFORE: Burke, Guill, and Vittone
Administrative Law Judges

DECISION AND ORDER

Per Curiam: This case arose from an application for labor certification on behalf of Alien Saeed Anwer ("Alien"), filed by Employer Maqsons ("Employer"), pursuant to Section 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the "Act") and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer ("CO") of the U.S. Department of Labor, Denver, Colorado, denied the application and Employer requested review pursuant to 20 C.F.R. § 656.26.

The following decision is based on the record upon which the CO denied certification and Employer's request for review, as contained in an Appeal File ("AF"), and any written argument of the parties. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

On February 10, 1995, Employer filed an application for labor certification to enable Alien to fill the position of Import/Export Agent. (AF 1-73). It amended the application to raise the wage offered to that which was prevailing at \$9.65 per hour.

The CO issued a Notice of Findings ("NOF") on March 28, 1996, proposing to deny certification on several grounds, including Employer's ability to pay the wage offered Alien. (AF 74-79). The CO requested that Employer provide documentation to verify financial stability from

January 1, 1994 to December 31, 1995 and included a list of acceptable documentation which included “the company’s tax return, annual financial statement, payroll records, and sales, inventory and other overhead records.” (AF 79).

Employer submitted its rebuttal on May 31, 1996. (AF 82-102). Employer stated that “the company’s gross business was 2,14,000 (sic) dollars in 1995 and it is paying good amount of taxis (sic). It has the strength to pay his employee more than it offered.” (AF 91). As documentation, Employer submitted a copy of its Schedule C, supplemental tax form, “Profit or Loss From Business” for 1995 which indicated that Employer had a profit of \$30,137 for 1995. (AF 94).

The CO issued the Final Determination (“FD”) on April 3, 1997, (AF 103-105), denying certification because Employer’s documentation “does not clearly show evidence that the business has substantial profits nor that the business is financially stable nor viable.” (AF 104).

On May 3, 1997, Employer filed a request for review. (AF 106-127). On June 9, 1997, the CO forwarded the record to this Board of Alien Labor Certification Appeals (“Board”).

DISCUSSION

An application for labor certification must clearly show that the employer has enough funds available to pay the wage or salary offered to the alien. 20 C.F.R. § 656.20(c)(1). Certification may be denied if an employer fails to meet its burden of proving the sufficiency of funds to pay the alien's salary. A CO may make reasonable requests for information showing the ability to pay the wage offered as required by § 656.20(c)(1). Failure to comply with a CO's reasonable request for such information constitutes a ground for denial of certification. *See, e.g., The Whislens*, 90-INA-569 (Jan. 31, 1992). If the CO requests a document which has a direct bearing on the resolution of an issue and is obtainable by reasonable efforts, the employer must produce it. *Gencorp*, 87-INA-659 (Jan. 13, 1988) (*en banc*).

In the NOF, the CO expressed concern about the existence of Employer’s business and about Employer’s ability to pay the offered wage. (AF 75, 79). On rebuttal, Employer stated that the company began in 1987 as an importer of sporting goods, and that he is the sole owner of the company and has not hired an employee in more than three years. (AF 89). Employer also submitted Schedule C as the only documentation that he could pay the offered wage. (AF 94).

We find that Employer has not met his burden of proving the ability to pay Alien’s salary. The CO reasonably requested several documents in the NOF and in response Employer provided one document. Although Employer’s Schedule C shows a profit,¹ it is not sufficient

¹We note that Employer’s Schedule C indicates a profit of \$30,137 and indicates that no wages were paid. (AF 94). The wage offered Alien is \$9.65 per hour with overtime. Assuming Alien only works forty hours per week, his annual salary would be approximately \$20,072. This

documentation to determine the true net worth of the company and ability to pay the offered wage without copies of the other related tax forms. All of the documentation requested by the CO was readily available to Employer and has a direct bearing on the issue of Employer's ability to pay the offered wage, and therefore, Employer should have provided the requested documentation.

Because we find Employer did not submit reasonably requested documentation, we find the CO's denial of certification was proper.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

SO ORDERED.

Entered at the direction of the Panel:

TODD R. SMYTH
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of

leaves Employer with approximately \$10,065 for his own salary.

the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.